

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.1148 of 2016

=====

1. Pramod Kumar son of late Sacchidanand Singh
2. Braj Bhushan Prasad Singh
3. Krishna Prasad Singh
4. Surendra Prasad Singh @ Surendra Singh
all sons of late Jaglal Singh, all residents of Nathupur Road, P.O. Kurthol, P.S.
Persa Bazar, District Patna.

.... Appellant/s

Versus

1. M/S B. N. and Associates at Mohalla Raghunath Tola Anisabad, P.S.
Gardanibagh, Town and District Patna.
2. Shri Baijnath Prasad Yadav son of Shri Ram Bilesh Rai, partner of M/S B.N. and
Associates, resident of Mohalla Raghunath Tola, Anisabad, P.S. Gardanibagh,
Town and District Patna.
3. Shri Kamlesh Kumar Singh son of Shri Bhagwan Singh, partner of M/S B.N. and
Associates, resident of Bye- pass Road, P.S. Gardanibagh, Anishabad, Town and
District Patna.
4. Shri Surendra Prasad son of late Rajendra Prasad, partner of M/S B.N. and
Associates, resident of Manik Chand Talab, P.S. Gardanibagh, Anishabad, Town
and District Patna.
5. Shri Daya Shanker Tiwary son of late Hiraji Tiwary, partner of M/S B.N. and
Associates, resident of Mohalla Raghunath Tola, Anisabad P.S. Gardanibagh,
Anishabad, Town and District Patna.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ashok Nandan Prasad
For the Respondent/s : Mr. Bishwa Nath Chaudhary

=====

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 09-10-2017

Heard learned counsel for the appellants as well as
learned counsel for the respondents and perused the record.

2. This Miscellaneous Appeal has been filed against the
Order dated 03.08.2016 passed by Subordinate Judge-II, Patna in
Title Suit no. 274 of 2010 whereby the learned lower court restrained
both the parties from entering into any agreement regarding the
transfer in either way or to make any construction over the suit



property till disposal of the suit.

3. Factual matrix of the case is that plaintiffs-respondents filed the Title Suit no. 274 of 2010 against the appellants and others for specific performance of agreement of sale dated 19.07.2008 executed by defendant nos. 1 and 2 and agreement of sale dated 19.08.2008 executed by defendant nos. 3 to 6 regarding 1.59-1/2 acres of land each in favour of the plaintiffs. During pendency of the said suit, the plaintiffs filed a petition dated 12.09.2013 for restraining the defendants from alienating the property in question. The defendants filed rejoinder against the said petition. After hearing the parties and perusing the record, learned lower court passed the impugned Order.

4. Being aggrieved and dissatisfied with the aforesaid Order, the defendants/appellants have preferred the present appeal.

5. It is submitted by the learned counsel for the appellants that the suit has been filed in the year 2010, but after long span of time of around 3 years, the injunction petition was filed by the plaintiffs on 12.09.2013 and the same was pressed and disposed of on 03.08.2016 which rules out merit of the said petition. Moreover, the learned lower court has not discussed the ingredients required for granting injunction, and has also not discussed the merit of the case and without applying its judicial mind and discussing the merit of the case and aforesaid ingredients has passed the aforesaid order. It is further submitted that as the plaintiffs have filed the aforesaid suit for



specific performance of agreement of sale, they have got no right, title and interest in the property in question and thus have got no *prima facie* case. Hence, no injunction order can be passed in such suit for specific performance of agreement and the impugned order passed by the learned lower court is wrong and illegal and is liable to be set aside.

6. On the other hand, it is submitted by the learned counsel for the respondents that all the defendants' witnesses have been examined in the case barring one and the case is going to be concluded shortly. The defendants have already sold out portion of the property in question and are adamant to sale out rest of the portion of the same. The learned lower court considering the irreparable injury going to be caused to the plaintiffs in case of selling out of the property in question by the defendants has directed both the parties to maintain the *status quo* during pendency of the case and the aforesaid order is correct and legal and is liable to be sustained and this appeal has no substance in it and is liable to be dismissed.

7. From perusal of record, it appears that it is the admitted case of the parties that half portion admeasuring 1.59-1/2 acres of land is hailing to defendant nos. 1 and 2 while another half admeasuring 1.59-1/2 acre is hailing to defendant nos. 3 to 6. The defendant nos. 1 and 2 have executed the agreement of sale dated 19.07.2008 in respect of their share of the property in favour of the plaintiffs-respondents likewise defendant nos. 3 to 6 have executed



agreement of sale dated 19.08.2008 regarding their share of the property in favour of the plaintiffs-respondents. But as the sale deed has not been executed by the defendants in favour of the plaintiffs, the plaintiffs have filed the aforesaid suit for specific performance of the aforesaid agreement of sale. It is also admitted to the parties that during the pendency of the case, the defendants have sold out portion of the property in question.

8. As the present suit has been filed by the plaintiffs for specific performance of agreement of sale and there has been only agreement to sale executed in their favour by the defendants, the plaintiffs have got no right, title and interest in the property in question and as such the *prima facie* case does not lie in their favour.

9. For granting injunction, three ingredients i.e. *prima facie* case, balance of convenience and irreparable injury likely to be caused to the party, in case of not granting injunction are required to be considered by the court. But from perusal of the impugned order, it appears that the learned lower court has not discussed the aforesaid ingredients and without discussing the same and merit of the case and applying its judicial mind, outrightly restrained both the parties from entering into any agreement regarding the transfer in either way or to make any construction over the suit property till the disposal of the suit perhaps mainly under the impression that two witnesses have been examined by the defence and the case is likely to be disposed of within short span of time, but in my considered opinion, this is not the



ground for granting injunction.

10. The suit has been filed in the year 2010, but the injunction petition has been filed by the plaintiffs after long span of time of around three years on 12.09.2013 and the same has been pressed in the year 2016, the aforesaid aspect of the case also goes to rule out the merit of the said petition.

11. Considering the aforesaid facts and circumstances of the case, I find and hold that the impugned order passed by the learned lower court without discussing the ingredients for granting injunction and merit of the case and without applying its judicial mind, is wrong and illegal. Hence it is set aside. Accordingly, this appeal is allowed.

12. However, the learned lower court is directed to dispose of the suit as expeditiously as possible preferably within one month from the date of receipt/production of a copy of this order.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.10.2017
Transmission Date	12.10.2017

